

Nos. 12,349 and 12,352

IN THE

United States Court of Appeals

For the Ninth Circuit

TIMOTHY E. ARMSTRONG, WILLIAM J. CONNOLLY, FILBERT DE LA ROSA, ERNEST DE LIMA, DAVID F. DONNELLY, LEON D. DUPUICH, STANLEY F. FISKE, LOUIS R. HICKSON, GUY T. HOUSTON, PAUL R. HOWLE, EMIL JOHNSON, THEODORE KALLEGAS, JOSEPH MARCUS, JOHN E. MORRIS, PAULUS OLSEN, NICANOR PENNA, JULIUS PIECHURA, GORDON POLLARD, LEONARD K. POWERS, ALBERT RIIS, DONALD SMITH, JAMES V. STINGLEY, HAROLD D. VALLIER, and KEITH M. WESTDYKE,

Appellants,

vs.

MATSON NAVIGATION COMPANY (a corporation), and UNITED STATES OF AMERICA,

Appellees.

No. 12,349

(CONSOLIDATED
CASES)

JAMES KEITH CURRIE, as Administrator of the Estate of JACK GEORGE CURRIE, Deceased,

Appellant,

vs.

MATSON NAVIGATION COMPANY (a corporation), and UNITED STATES OF AMERICA,

Appellees.

No. 12,352

FILED

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BRIEF FOR APPELLANTS.

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No. 12,352

BRIEF FOR APPELLANTS.

FOREWORD.

These cases are two of four cases consolidated for trial and now before this court on appeal as Nos. 12349, 12350, 12351, and 12352.

In case No. 12349 the libelants were seamen seeking recovery of bonus wages and maintenance for the time they were interned by the Japanese and in war zone areas. In case No. 12352 the libelant was an administrator seeking recovery of similar bonus wages and maintenance of a deceased seaman. The term "libelant" or "libelants" as used in subsequent parts of the brief is intended to include this deceased seaman unless otherwise indicated.

When the libels were originally filed the sole respondent was appellee Matson Navigation Company. (A 1.) It impleaded United States of America as respondent because of charter party agreement, dated November 24, 1941, stipulating certain reimbursement and indemnity in favor of respondent Matson Navigation Company. (A 27-30.) The libelants have no concern with this charter party on their appeal. The term "respondent" or "appellee" as used in subsequent parts of the brief is intended to apply to respondent and appellee Matson Navigation Company.

The two cases have a record largely in common, and an order of this court was heretofore made consolidating them on appeal, dispensing with formal Apostles in No. 12352, and permitting a common brief. References herein are to the Apostles in the Armstrong case (No. 12349). Matters peculiar to the Currie

case (No. 12352) and showing the timeliness and regularity of the appeal therein are included in the Appendix to the brief.

The trial judge decided these cases adversely to the libelants on the authority of his earlier decision in *Agnew v. American President Lines, Ltd.* (The *President Harrison*), 73 F. Supp. 944. (A 82.) With slight exceptions, the present cases parallel the cases before the court in *Agnew v. American President Lines, Ltd.*, No. 11943, and *Griffin v. American President Lines, Ltd.*, No. 11944, reversing 73 F. Supp. 944, as to the claims for bonus wages and affirming it as to the claims for maintenance.

STATEMENT OF JURISDICTION.

The libel in No. 12349 was in admiralty by seamen to recover wages and maintenance. (A 1-8.) The libel in No. 12352 was in admiralty by an administrator to recover wages and maintenance of a deceased seaman. (A 84-97.) The District Court had jurisdiction. (28 U.S.C.A., sec. 41 (3), now 28 U.S.C.A. Judiciary and Judicial Procedure, sec. 1333.) Final decree in both actions was entered March 24, 1949. (A 99-101.) Notice of Appeal in both actions was filed June 20, 1949. (A 109-110; Appx., Notice of Appeal.) An order allowing appeal was entered the same day. (A 106; Appx., Order Allowing Appeal.) The appeals were timely taken (28 U.S.C.A. Judiciary and Judicial Procedure, sec. 2107) and timely docketed (A 128-129;

Appx., Order Extending Time). Jurisdiction of this court to review the final decree of the District Court is therefore sustained by 28 U.S.C.A. Judiciary and Judicial Procedure, secs. 1291, 1294.

STATEMENT OF THE CASE.

The libelants were members of the licensed and unlicensed personnel of the crew of respondent's ship MALAMA when it sailed from San Francisco for the Philippine Islands on November 29, 1941. (A 87-88.)

For the deck, the licensed personnel were members of the National Organization of Masters, Mates and Pilots of America. (A 89-91.) In case No. 12349, licensed personnel in that class were libelants Leon D. Dupuich, Gordon Pollard, and Keith M. Westdyke. (A 89-90.) And for the deck, the unlicensed personnel were members of the Sailors' Union of the Pacific. (A 89-91.) In case No. 12349, unlicensed personnel in that class were libelants Timothy E. Armstrong, Ernest De Lima, Stanley F. Fiske, Guy T. Houston, Emil Johnson, Joseph Marcus, Paul Olsen, Julius Piechura, Albert Riis; and in case No. 12352, Jack George Currie. (A 89-90.)

For the engine room, the licensed personnel were members of the Marine Engineers' Beneficial Association. (A 89-91.) In case No. 12349, licensed personnel in that class were libelants William J. Connolly, Filbert De La Rosa, Louis R. Hickson, and Donald Smith. (A 89-90.) And for the engine room, the unlicensed

personnel were members of the Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers' Association. (A 89-90.) In case No. 12349, unlicensed personnel in that class were libelants David D. Donnelly, Paul R. Howle, Theodore Kallegas, John E. Morris, Nicanor Pena, Leannard K. Powers, James V. Stingley, and Harold D. Vallier. (A. 89-90.)

The MALAMA arrived at Honolulu December 8, 1941—the day after the Japanese bombed Pearl Harbor. (A 88.) Eight days later the ship sailed *for New Zealand*. (A 88.) On January 1, 1942, the ship was sunk by enemy action of the Japanese about 600 miles southeast of Tahiti, and the crew made prisoners of war. (A 88.) For the next 42 days they were on a Japanese raider enroute to Japan, crossing the 180th meridian westbound on January 6, 1942. (A 88.) Thereafter, and for the duration of the war, they were interned by the Japanese west of the 180th meridian. (A 88.) They were liberated about September 5, 1945, and on repatriation recrossed the 180th meridian eastbound on the various dates set forth in respondent's answer (A 21-22) and stipulated to at the trial. Libelants received no maintenance from respondent, or payment therefor, subsequent to January 1, 1942.

The photostatic copy of the shipping articles of the MALAMA admitted in evidence at the trial as Libelants' Exhibit No. 2, is on file in this court. The following rider *applicable to licensed personnel* was part of the shipping articles:

“RIDER

“The Matson Navigation Company agrees to pay war risk bonuses to the crew of the SS MALAMA from the crossing of the 180th Meridian Westbound until recrossing the same Meridian Eastbound as follows:

LICENSED DECK OFFICERS: $66\frac{2}{3}\%$ of the basic monthly wages effective as of Oct. 1, 1941;

LICENSED ENGINE OFFICERS: $66\frac{2}{3}\%$ of the basic monthly wages effective as of Oct. 1, 1941;

RADIO OFFICER: $66\frac{2}{3}\%$ of the basic monthly wage effective as of Oct. 1, 1941.

“In the event the vessel is ordered by an Agency or Department of the United States Government to return via another trade route, war risk bonuses will be paid while the vessel is in any of the war zone areas I to VI inclusive at the rates described in the supplementary agreements between the various Marine Unions and the Pacific American Shipowners Association of San Francisco.

“In the event of loss of personal effects by any Licensed Deck Officer, Licensed Engine Officer, or radio Officer, due to the necessity of the abandoning ship resulting from torpedoing, mining or bombing of the vessel, each such officer so affected shall be reimbursed by a sum not to exceed \$500.00.

“In the event the vessel be interned, destroyed or abandoned as a result of war operations and be unable to continue her voyage, basic wages and emergency wages specified in the collective bargaining agreements between the parties shall be

paid to the date members of the crew arrive in Continental United States ports and the employes shall be repatriated to a Continental United States port. While employes are in the war zone areas described in the supplementary agreements covering war risk bonuses payable to Licensed Officers, war risk bonuses shall also be paid to them at the rate of 66 $\frac{2}{3}$ % of the said basic wages in Areas I to V inclusive, and 25% in Area VI.

“War Risk Insurance shall be furnished each Licensed Officer of the SS MALAMA, Voy. No. 54, for the voyage as described on ship’s Articles; such policy shall provide for the payment of the said sum of \$5,000.00 to the estate or designated beneficiary of such Licensed Officer in case of death due to war conditions or the payment of said sum to the Licensed Officer himself in the event of his total and permanent disability due to such war conditions, and shall provide for the payment of any sum less than \$5,000.00 to which such Licensed Officer may be entitled for injury less than total or permanent disability resulting from said war conditions. Such policies shall be made available for inspection at the office of the Company.

“(Initialed JJb)”

And the following rider applicable to *unlicensed personnel* was also part of the shipping articles:

“RIDER

“The Matson Navigation Company agrees to pay war risk bonuses to the crew of the SS MALAMA from the crossing of the 180th Meridian Westbound until recrossing the same Meridian Eastbound, as follows:

“UNLICENSED DECK PERSONNEL: \$80.00 per month;
UNLICENSED ENGINE PERSONNEL: \$80.00 per month;

STEWARD'S PERSONNEL: \$80.00 per month to all employees entitled to receive \$120.00 or less as basic monthly wages as of Oct. 1, 1941; 66 $\frac{2}{3}$ % of the basic monthly wages in excess of \$120.00.

“In the event the vessel is ordered by an Agency or Department of the United States Government to return via another trade route, war risk bonuses will be paid while the vessel is in any of the war zone Areas I to VI inclusive at the rates prescribed in the supplementary agreements between the various Marine Unions and the Pacific American Shipowners Association at San Francisco.

“In the event of loss of personal effects by any unlicensed member of the crew, due to the necessity of abandoning ship resulting from torpedoing, mining or bombing of the vessel, the company agrees to reimburse each unlicensed man so affected by an amount not in excess of \$150.00.

“In the event the vessel be interned, destroyed or abandoned as a result of war operations and is unable to continue her voyage, basic wages and emergency wages specified in the collective bargaining agreements between the parties shall be paid to the date the members of the crew arrive in a Continental United States Port, and the employees shall be repatriated to a Continental United States Port. War risk bonuses at the rates specified in sub-division (b) paragraph 1 of the supplementary agreements between the parties shall

be paid while employes are in the war zone areas defined therein.

“War Risk Insurance in the sum of \$5,000.00 shall be furnished to each member of the crew of the SS MALAMA, Voy. No. 54, for the voyage as described on Ship’s Articles.

“(Initialed JJB)”

Each libelant in case No. 12349 sought to recover war bonus at the appropriate rate stipulated in the applicable rider covering the period from the crossing of the 180th meridian westbound until crossing the same meridian eastbound. (A 4-5.) Each said libelant also sought to recover maintenance from date of capture by the Japanese on January 1, 1942, to date of liberation on September 5, 1945. (A 5.) The claim of each libelant was computed in a schedule annexed to the libel. (A 7-8.) Each said libelant further sought to recover interest and costs. (A 6.) Similar claims were made in case No. 12352 respecting the deceased seaman.

The District Court found that the shipping articles did not entitle libelants to the war bonus they claimed. (A 93-95.) It further found that libelants were not entitled to the maintenance they claimed. (A 95.) Its final decree was that “the libelants have and recover nothing from the respondent or the impleaded respondent herein and that such libels be dismissed”. (A 101.)

One of the broad grounds on appeal is that the shipping articles clearly entitled libelants to the war bonus

they claimed and that the findings and judgment against them in such respect are contrary to the evidence and the law. Another broad ground on appeal is that the general maritime law clearly entitled libelants to the maintenance they claimed and that the findings and judgment against them in such respect are contrary to the evidence and the law.

Rulings of the trial court respecting evidence are also assigned as error. One ruling excluded evidence of the construction given the shipping articles by the parties at the time of signing. (A 111; Appx., Assignment of Errors.) Another ruling excluded evidence of contemporaneous oral contract between the parties for payment of war bonus for period of internment on land. (A 111; Appx., Assignment of Errors.) And still another ruling excluded evidence of deviation of voyage. (A 111-112; Appx., Assignment of Errors.)

After the submission of the cases, libelants moved to set aside the submission and reopen the causes for further proof, namely, testimony of the master of the MALAMA when the shipping articles were signed. (A 68-70.) The motion was supported, in part, by his affidavit, explaining his absence from continental United States at the time of trial, and averring that in his presence the Deputy Shipping Commissioner told the seamen, in response to their inquiries as to the meaning of the riders, that if the vessel was captured or interned their wages and bonus would go on until they got back to the United States, and that affiant, as master of the vessel, said nothing, for the reason that he had the same understanding as to the

meaning of the riders. (A 71-72.) The denial of this motion is assigned as error. (A 112; Appx., Assignment of Errors.)

Appellants ask that the final decree of the District Court be reversed and the causes remanded for the entry of a decree for each appellant determining for each the amount of war bonus and maintenance to which he is entitled, with interest at 7% per annum from the date his libel was filed, and costs.

SPECIFICATION OF ASSIGNED ERRORS RELIED UPON.

The assigned errors are the same in each case except to the extent that an administrator-libelant in case No. 12352 required change in phraseology. Each appellant relies upon each of his assigned errors, namely, Nos. 1 to 12, both inclusive. (A 111-113; Appx., Assignment of Errors.)

ARGUMENT OF THE CASE.

1. **THE SHIPPING ARTICLES WERE PLAIN, CERTAIN, AND UNAMBIGUOUS, AND CLEARLY ENTITLED THE LIBELANTS TO WAR BONUS, AT THE RATES STIPULATED THEREIN, COVERING THE PERIOD FROM THE CROSSING OF THE 180TH MERIDIAN WESTBOUND UNTIL CROSSING THE SAME MERIDIAN EASTBOUND.**

Assignment of Error No. 1: "The court erred in decreeing that libelants have and recover nothing from the respondent or the impleaded respondent." (A 111; Appx., Assignment of Errors.)

Assignment of Error No. 2: "The court erred in decreeing that the libel be dismissed." (A 111; Appx., Assignment of Errors.)

Assignment of Error No. 8: "The court erred in finding that the riders attached to the shipping articles were ambiguous, vague, or uncertain." (A 112, Appx., Assignment of Errors.)

Assignment of Error No. 9: "The court erred in finding that libelants were not and each libelant was not entitled to war bonus for the period of internment on land west of the 180th meridian." (A 112; Appx., Assignment of Errors.)

Assignment of Error No. 10: "The court erred in failing to find and decree that libelants were and each libelant was entitled to war bonus, at the rate specified in the shipping articles, for the period of internment on land west of the 180th meridian, together with interest thereon." (A 112; Appx., Assignment of Errors.)

In denying the claims of libelants for war bonus the District Court merely followed its earlier decision in the President Harrison cases, *Agnew v. American President Lines, Ltd.*, 73 F. Supp. 944. (A 82.) But the decision of the District Court in the President Harrison cases insofar as it denied the libelants war bonus was reversed by this court in *Agnew v. American President Lines, Ltd.*, No. 11943, *Griffin v. American President Lines, Ltd.*, No. 11944, and *Federer v. American President Lines, Ltd.*, No. 11946. In those cases this court definitely decided that shipping article

riders worded as those here involved entitled captured and interned seamen to war bonus from the time they crossed the 180th meridian westbound until they recrossed the same meridian eastbound. It would be idle for appellants to do more than invoke the authority of those decisions to demonstrate that the final decree herein denying war bonus should be reversed and a decree entered for war bonus as claimed by libelants.

2. THE COURT ERRED IN EXCLUDING EVIDENCE OF THE CONSTRUCTION GIVEN THE SHIPPING ARTICLES BY THE PARTIES AT THE TIME OF SIGNING. (Assignment of Error No. 4.) (A 111; Appx., Assignment of Errors.)

The shipping articles, signed in 1941, reflected an agreement between the master and the seamen. (45 U.S.C.A., sec. 564.) In employing seamen the master acted as the agent of respondent and his principal was bound by his acts, admissions, conduct, and knowledge. (*Butler v. Boston etc. Co.*, 139 U.S. 527, 9 S. Ct. 612, 616, 32 L. Ed. 1017.) The master was subject to superintendence by the shipping commissioner. (46 U.S.C.A., sec. 545.) Before the shipping articles were signed, it was the duty of the shipping commissioner to acquaint master and seamen with the conditions thereof and to ascertain that they understood the same. (45 U.S.C.A., sec. 565.)

The libelants produced Leon Dupuich as a witness at the trial. (A No. 12351, Vol. II, p. 6.) He was second officer of the MALAMA. (A 89.) When interrogated concerning what occurred when the shipping articles

were signed in the presence of a Deputy Shipping Commissioner and the master, he replied that the shipping commissioner told the seamen in response to their inquiries as to what the riders meant that they would be paid wages and bonus "until they were repatriated to a continental United States port". (A 12351, Vol. II, p. 16.) A motion to strike this testimony was granted. The court erred. The construction given a contract by the parties is always a consideration of great weight, is usually adopted by the courts, and evidence thereof is competent. (*Brooklyn Life Ins. Co. v. Dutcher*, 96 U.S. 269, 273, 24 L. Ed. 410; *United States v. Johnson*, 9 Cir. 160 F. 2d 326, 329.)

3. THE COURT ERRED IN EXCLUDING EVIDENCE OF CONTEMPORANEOUS ORAL CONTRACT BETWEEN THE PARTIES FOR PAYMENT OF WAR BONUS FOR PERIOD OF INTERNMENT ON LAND. (Assignment of Error No. 5.) (A 111; Appx., Assignment of Errors.)

Under the theory entertained by the trial court that neither the shipping articles nor the collective bargaining agreements stipulated for payment of war bonus while the seamen were interned on land (*Agnew v. American President Lines, Ltd.*, 73 F. Supp. 944), it was obvious error for the court to exclude the evidence just mentioned, for such evidence would be competent to establish a contemporaneous oral agreement covering such contingency (*Dittmar v. Star Cont. Co.*, 2 Cir., 249 F. 437, 438; *The Lola*, Fed. Cas. No. 8468; 3 Williston, Contracts 1832-1835,

1842, secs. 637-638, 642). The theory of the court was wrong, of course, and error will disappear when this court declares the theory wrong.

4. **THE COURT ERRED IN EXCLUDING EVIDENCE OF DEVIATION OF VOYAGE.** (Assignment of Error No. 6.) (A 111-112; Appx., Assignment of Errors.)

The evidence at the trial established that the MALAMA sailed from San Francisco November 29, 1941, arrived in Honolulu December 8, 1941, sailed from Honolulu for New Zealand 8 days later, and was sunk by enemy action of the Japanese and the crew made prisoners of war on January 1, 1942, 600 miles southeast of Tahiti. (A 88.) At the trial libelants offered evidence that deviation of voyage had occurred. (A No. 12541, Vol. II, pp. 17-18.) The court held such evidence inadmissible and granted motions to strike it, (A 36.) This was error.

The shipping articles, entered into before the outbreak of the war with Japan, stipulated for a voyage from the port of San Francisco to the Philippine Islands and back to a final Pacific Coast port of discharge. That a voyage to New Zealand after the outbreak of the war was a deviation from the stipulated voyage cannot be questioned. (*The Chester Valley*, 5 Cir., 110 F. 2d 592, 594; *The Pelotas*, 5 Cir., 66 F. 2d 75, 77; *General Hide & Skin Corp. v. United States*, D.C. N.Y. 24 F. 2d 736, 738; *The Henry W. Cramp*, 3 Cir., 20 F. 2d 320, 321; *Shackman v. Cunard White Star*, D.C. N.Y. 31 F. Supp. 948, 951.)

Speculation as to whether it was safer after the outbreak of war to send the ship and crew on a voyage to New Zealand instead of the Philippine Islands, or as to whether it would have been safer to return them to San Francisco, is wholly immaterial. What is material is that there was a deviation from the voyage stipulated in the shipping articles, and that a different voyage, without the signing of new shipping articles, was undertaken after war with Japan had created hazardous conditions which did not exist when shipping articles were signed at San Francisco. The law addressed to analogous situations has declared that under such circumstances these seamen were entitled to the fullest measure of compensation, including maintenance, until their return to the United States. (*Sheppard v. Taylor*, 30 U.S. 675, 8 L. Ed. 268, 282; *The Kentra*, D.C. N.Y. 286 F. 163; *Turtle v. Northwestern SS Co.*, D.C. Wash., 154 F. 146, affirmed *Northwestern SS Co. v. Turtle*, 9 Cir., 162 F. 256.)

5. **THE COURT ERRED IN DENYING THE MOTION OF LIBELANTS TO SET ASIDE THE SUBMISSION AND REOPEN CAUSE FOR INTRODUCTION OF FURTHER PROOF.** (Assignment of Error No. 7.) (A 112; Appx., Assignment of Errors.)

After the submission of the cases, libelants moved to set aside the submission and reopen the causes for further proof, namely, testimony of the master of the MALAMA when the shipping articles were signed. (A 68-70.) An affidavit in support of the motion was made by master, explaining his absence from conti-

mental United States at the time of trial, and averring that in his presence the Deputy Commissioner told the seamen, in response to their inquiries as to the meaning of the riders, that if the vessel was captured or interned their wages and bonus would go on until they got back to the United States, and that affiant, as master of the vessel, said nothing, for the reason that he had the same understanding as to the meaning of the riders. (A 71-72.) The motion was denied, it being recited in the order that "it be deemed that said Malcolm R. Peters has testified in said causes in accordance with his affidavit annexed to said motion and that such testimony was thereafter stricken as inadmissible the same as if a motion to strike said testimony had been made and granted". (A 79.)

The court erred in denying the motion. A submission should be set aside and a cause reopened for the introduction of further testimony in furtherance of justice. (*The Bainbridge*, 9 Cir., 199 F. 404, 409; *De Sousa v. Dollar S. S. Lines*, D.C. Wash., 292 F. 490, 491.) The master was the agent of the shipowner, and the shipowner was bound by his knowledge, acts, conduct, and admissions in the employment of the crew. (*Butler v. Boston etc. Co.*, 130 U.S. 527, 9 S. Ct. 612, 618, 32 L. Ed. 1017; *Andrews v. Wall*, 44 U.S. 568, 11 L. Ed. 729, 731; *United States v. Gooding*, 25 U.S. 460, 6 L. Ed. 693, 696.) The proposed testimony of Captain Peters was competent and decisively in favor of libelants on the issue then before the court as to the period for which the seamen were entitled to war bonus. (*Brooklyn Life Ins. Co. v. Dutcher*, 95 U.S. 269,

273, 24 L. Ed. 410; *United States v. Johnson*, 9 Cir., 160 F. 2d 769, 797; *International Co. v. Sloan*, 10 Cir., 114 F. 2d 326, 329; 3 Williston, Contracts 1792-1795, sec. 632.)

It is now obvious of course that the shipping commissioner and the master interpreted the riders to the Malama shipping articles in accord with the interpretation given by this court to similar riders in the President Harrison cases. This claim of error becomes academic when the rule of those cases is followed, but it was error and prejudicially so when the District Court was following a contrary rule.

6. THE DISTRICT COURT ERRED IN DENYING LIBELANTS
ANY RECOVERY OF MAINTENANCE.

Assignment of Error No. 11: "The court erred in finding that libelants were not and each libelant was not entitled to maintenance after January 1, 1942." (A 112; Appx., Assignment of Errors.)

Assignment of Error No. 12: "The court erred in failing to find and decree that libelants were and each libelant was entitled to maintenance after January 1, 1942, and to payment therefor and to interest thereon." (A 112-113; Appx., Assignment of Errors.)

In the President Harrison cases this court affirmed the decree of the District Court (73 F. Supp. 944) insofar as it denied maintenance claims of the libelants. The appellee therein has indicated an intention to petition the Supreme Court for certiorari and, if

granted, it is possible that the question of maintenance will be reopened. These appellants therefore wish to keep the question open here and the reasons advanced in the President Harrison cases for the allowance of maintenance are therefore reurged. Moreover, additional and cogent reason for the allowance of maintenance exists in the Malama cases. Deviation of voyage is involved. Where deviation of voyage has occurred seamen are entitled to the fullest measure of compensation, *including allowance for maintenance*, until they get back to a home port. (*Sheppard v. Taylor*, 30 U.S. 675, 8 L. Ed. 268, 282; *The Kentra*, D.C. N.Y. 286 F. 163; *Turtle v. Northwestern SS Co.*, D.C. Wash., 154 F. 146, affirmed *Northwestern SS Co. v. Turtle*, 9 Cir., 162 F. 256.) Appellants invoke that rule.

7. LIBELANTS ARE ENTITLED TO INTEREST AND COSTS.

Assignment of Error No. 10, earlier quoted, challenged as error the failure of the court to decree war bonus, "together with interest thereon". (A 112; Appx., Assignment of Errors.) Assignment of Error No. 12, earlier quoted, challenged as error the failure of the court to decree maintenance, and "interest thereon". (A 112-113; Appx., Assignment of Errors.) In support of these assignments it is enough to cite the decisions of this court in the President Harrison cases allowing interest and costs.

CONCLUSION.

Appellants therefore respectfully submit that the decree of the District Court should be reversed with directions to the court to award libelants (1) war bonus from the time they crossed the 180th meridian westbound until they recrossed the same meridian eastbound, (2) maintenance for the period of their internment, (3) interest thereon, at 7% per annum from date of filing libel, and (4) costs.

Dated, San Francisco,
October 24, 1949.

ALBERT MICHELSON,
Proctor for Appellants.

(Appendix Follows.)

Appendix

Original filed June 21, 1949,

Clerk, U. S. Dist. Court, San Francisco.

In the United States District Court for the Northern
District of California, Southern Division

In Admiralty
No. 24,807-H-G

James Keith Currie, as Administrator
of the Estate of Jack George Currie,
Deceased,

Libelant,

vs.

Matson Navigation Company (a cor-
poration),

Respondent,

United States of America,

Impleaded Respondent.

ASSIGNMENT OF ERRORS

(Statement of Points on Appeal)

In connection with his appeal the libelant above named hereby assigns the following errors in the decree of this court entered herein.

(1)

The court erred in decreeing that libelant have and recover nothing from the respondent or the impleaded respondent.

(2)

The court erred in decreeing that the libel be dismissed.

(3)

The court erred in failing to decree that libelant have and recover costs from the respondent.

(4)

The court erred in excluding evidence of the construction given the shipping articles by the parties at the time of signing.

(5)

The court erred in excluding evidence of contemporaneous oral contract between the parties for payment of war bonus for period of internment on land.

(6)

The court erred in excluding evidence of deviation of voyage.

(7)

The court erred in denying the motion of libelant to set aside the submission and reopen the cause for introduction of further proof.

(8)

The court erred in finding that the riders attached to the shipping articles were ambiguous, vague, or uncertain.

(9)

The court erred in finding that libelant's intestate, Jack George Currie, was not entitled to war bonus for the period of internment on land west of the 180th meridian.

(10)

The court erred in failing to find and decree that libelant's intestate, Jack George Currie, was entitled to war bonus, at the rate specified in the shipping articles, for the period of internment on land west of the 180th meridian, together with interest thereon.

(11)

The court erred in finding that libelant's intestate, Jack George Currie, was not entitled to maintenance after January 1, 1942.

(12)

The court erred in failing to find and decree that libelant's intestate, Jack George Currie, was entitled to maintenance after January 1, 1942, and to payment therefor and interest thereon.

Dated, San Francisco, June 21, 1949.

Albert Michelson,
Proctor for said Libelant.

Original filed June 21, 1949,
Clerk, U. S. Dist. Court, San Francisco.

In the United States District Court for the Northern
District of California, Southern Division

In Admiralty
No. 24,807-H-G

James Keith Currie, as Administrator
of the Estate of Jack George Currie,
Deceased,

Libelant,

vs.

Matson Navigation Company (a cor-
poration),

Respondent,

United States of America,

Impleaded Respondent.

NOTICE OF APPEAL TO UNITED STATES COURT OF APPEALS

Notice is hereby given that the libelant above named hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final decree entered in the above entitled cause on March 24, 1949.

Dated, San Francisco, June 21, 1949.

Albert Michelson,
Proctor for said Libelant.

Original filed June 21, 1949,

Clerk, U. S. Dist. Court, San Francisco.

In the United States District Court for the Northern
District of California, Southern Division

In Admiralty
No. 24,807-H-G

James Keith Currie, as Administrator
of the Estate of Jack George Currie,
Deceased,

Libelant,

vs.

Matson Navigation Company (a cor-
poration),

Respondent,

United States of America,

Impleaded Respondent.

ORDER ALLOWING APPEAL

The petition of the libelant in the above entitled cause for the allowance of the appeal to the United States Court of Appeals for the Ninth Circuit is hereby allowed and bond fixed in the sum of \$250.

Dated, San Francisco, June 21, 1949.

Louis E. Goodman,

United States District Judge.

Copy of the above and foregoing Order Allowing Appeal is hereby acknowledged this 21st day of June, 1949.

In the United States District Court for the Northern
District of California, Southern Division

In Admiralty

No. 24,807-G

James Keith Currie, as Administrator
of the Estate of Jack George Currie,
Deceased,

Libellant,

vs.

Matson Navigation Company (a cor-
poration),

Respondent,

United States of America,

Impleaded Respondent.

ORDER

Extending Time for Filing Apostles on Appeal and
Cross-Appeal and Docketing Appeal and Cross-Appeal
and

Amending Designations of Contents of Apostles
on Appeal and Cross-Appeal

It appearing to the Court that it will be imprac-
tical to prepare the Apostles on Appeal and Cross-
Appeal herein within the time designated in the re-
spective Citations herein;

Now, on motion of Messrs. Brobeck, Phleger & Har-
rison, Proctors for Matson Navigation Company, Re-
spondent, Appellee and Cross-Appellant, it is hereby

Ordered that the time within which the Apostles on Appeal and Cross-Appeal shall be filed and the Appeal and Cross-Appeal docketed, be and it is hereby extended to and including September 14, 1949, and it is

Further ordered that the respective Designations of the Contents of the Apostles on Appeal and Cross-Appeal be and each of them is hereby amended so that said Apostles shall contain this Order.

Dated, July 12, 1949.

Louis E. Goodman,
United States District Judge.

